

Judge slams the door on Keystone landfill suit

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2/12/94

7-year legal battle has abrupt end

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UNION TWP. — A seven-year legal battle came to an abrupt halt Thursday when a federal judge slammed the door on a lawsuit filed in 1987 against the Keystone Sanitation Co.

"I'm shocked," Marcia Brown, one of the plaintiffs in the case, said Friday morning. "How in the world could she throw everything out, with all the evidence we put in front of her? It is just unbelievable. What does it take to prove there is contamination moving off site from that landfill?"

What it takes, said Robert B. Hoffman, the attorney who argued the case for Keystone, is evidence, and the judge decided the evidence was not there.

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HARRISBURG — Federal Judge Sylvia Rambo wrote an 83-page decision on the lawsuit against Keystone Sanitation, but her ruling was actually quite concise.

The plaintiffs, she said, simply failed to prove any of their accusations against the owners of the Adams County landfill.

With that determination, Rambo ended a court battle Thursday that stretches back several years. She ruled in favor of the landfill owners, told the litigants she won't consider any more legal motions, and directed the court clerk to close the file in the case.

The plaintiffs — Tim and Marcia Brown and Cloyd and Dorothy Willow — had accused Keystone of putting hazardous waste into its landfill. They said run-off from the site polluted their neighboring farms in Union Township.

Not so, said Rambo. "The court is not persuaded that the landfill was the source of contamination," the judge wrote. "Over a substantial period of time, including prior to the opening of the Keystone Landfill, the water on the Brown property has been of poor quality and, at times, undrinkable."

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Battle

Hoffman said the court found there was no evidence that the either the wells or surface water on property belonging to the plaintiffs to the west and south of the landfill had been affected by activity at the landfill.

Hoffman said the Keystone site was on the Superfund list because of contamination in one single monitoring well — known as K1 — on the landfill site had high readings of contaminants several times higher than any other wells around it.

"There is a very localized, focused problem at that landfill," Hoffman said. "That well had nothing to do with the Browns or the Willows. The water from K1 is moving very slowly to the northeast, toward land that is also owned by the Noels."

Hoffman said Rambo's finding "could and should" effect the approach the EPA takes in its approach to further action in the landfill. "You would think the EPA would take seriously the conclusions of a federal

judge in a litigated case....It is contrary to what the community has been allowed to think."

The agency is now in the early stages of planning a procedure for testing for groundwater contamination.

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MARCIA BROWN

tion off site. In an interview earlier this month, the EPA's Keystone Remedial Project Manager, Christopher Corbett, said the first groundwater tests off site should begin late this month.

Franklin Kury, the Harrisburg attorney who has handled Keystone's general legal work for years, said he believed the EPA "over-reacted" and yielded to community pressure when it placed the landfill on the Superfund

list.

"Our view is there is no need for the EPA to be in here at all," Kury said. "The problem that was there is being handled through the state. (This ruling) is a substantial vindication for the Noels for a lot of flack and baseless allegations they've taken from people for a lot of years. It's based on emotion and there is no factual basis to it. But this was a judge, not a press conference. We were dealing with fact here, not opinion."

Kenneth F. Noel, owner of the landfill, now closed and on the Environmental Protection Agency's Superfund list since 1987, said the decision by U.S. Middle District Judge Sylvia H. Rambo was "a long time coming."

"Everything takes time," Noel said. "It backs up what we've been saying for years. Everybody says things are so bad around here, and that's a bunch of crap. We've said that all along."

The original suit was filed in the United States District Court for the District of Baltimore, as some of the

plaintiffs' property was in Maryland. Eventually, the case landed in Judge Rambo's court.

The suit was first brought by four groups; Tim and Marcia Brown and Cloyd and Dorothy Willow of Union Township, Adams County, and by Wallace and Rose Hagan, and Mildred Matthias of the Silver Run, Maryland area. The Hagans later withdrew voluntarily from the suit. Keystone's attorneys were then successful in obtaining a ruling from Rambo removing Matthias from the suit.

The trial took place in late 1992, Hoffman said. It has taken since then for Judge Rambo to write up the 83-page decision. The document, released Thursday, essentially dismisses the case against Keystone, states that the court is not open to reconsideration and orders the clerk of the court to close the case.

Marcia Brown said despite the Rambo ruling, the case is not over.

"I'll get with my attorney and get him working on it," she said. "We're not done yet."

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Lawsuit

She added that the Willow's water "clearly could not have been affected by the landfill" because their spring is far removed from the landfill. The Willow's spring is on the north border of their property, while the landfill is to the east.

The Browns and Willows leveled three charges against landfill owners Ken and Anna Noel. Rambo shot down the arguments one by one.

First, the plaintiffs said Keystone violated federal law by creating an "imminent and substantial danger to the environment." But Rambo said the plaintiffs failed to prove any contaminants were leaked from the landfill into the surrounding environment.

Next, the plaintiffs argued that Keystone violated the federal Clean Water Act by permitting pollutants to enter waterways.

Rambo said the Browns failed to show that the run-off onto their property contained any contaminants. She said there was "scant evidence" of contaminants from the landfill, but "abundant evidence" that pollutants on the Brown farm, including pesticides, originated on the couple's property.

As for the Willows, who didn't testify during the trial, the judge said they failed to show that contaminated water ever entered their property.

The final allegation — a charge that the landfill owners failed to comply with permit laws and other regulations — also was rejected due to lack of proof.

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